

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KEITH HUNTER, an individual, and
ELAINE HUNTER, an individual,

Plaintiffs,

v.

BANK OF AMERICA, N.A.;
SPECIALIZED LOAN SERVICING, LLC, a
Delaware limited liability company;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company;
QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, a
Washington corporation; HSBC BANK
USA, N.A., as Trustee for Merrill Lynch
Mortgage Investors, Inc., Mortgage
Investors, Inc., Mortgage Pass-Through
Certificates, MANA Series 2007-OAR2;
JOHN DOES NO. 1-10,

Defendants.

Case No. 2:16-cv-01718-RAJ

**DEFENDANTS' MEMORANDUM OF
LEGAL AUTHORITY REGARDING
CONTEMPT STANDARD**

**NOTE FOR CONSIDERATION:
FEBRUARY 9, 2022**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Defendants Nationstar Mortgage, LLC and HSBC Bank USA, N.A. (collectively, "Nationstar") submit the following memorandum of legal authority regarding the standard for holding a non-party in contempt.

II. LEGAL STANDARD FOR CONTEMPT

Federal Rule of Civil Procedure 45(g) authorizes courts to impose "sanctions against a nonparty for failure to comply with a subpoena[.]" *Pennwalt Corp. v. Durand-Wayland, Inc.*, 708

DEFENDANTS' MEMORANDUM OF LEGAL
AUTHORITY RE CONTEMPT STANDING - 1
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1 F.2d 492, 494 (9th Cir. 1983). A properly issued subpoena is “itself a court order, and
 2 noncompliance may warrant contempt sanctions.” *Id.* at 494 n.5. Under Rule 45(g), courts “may
 3 hold in contempt a person who, having been served, fails without adequate excuse to obey the
 4 subpoena or an order related to it.” *Sali v. Corona Reg’l Med. Ctr.*, 884 F.3d 1218, 1224
 5 (9th Cir. 2018).

6 A party moving for civil contempt must prove that the non-moving party violated a court
 7 order by clear and convincing evidence. *FTC v. Enforma Natural Prods., Inc.*, 362 F.3d 1204,
 8 1211 (9th Cir. 2004). The burden then shifts to the contemnor to demonstrate he “took every
 9 reasonable step to comply with the subpoena and explain why compliance was not possible.”
 10 *Forsythe v. Brown*, 281 F.R.D. 577, 588 (D. Nev. 2012) (plaintiffs’ expert witness failed to
 11 demonstrate he took reasonable steps to comply with defendants’ subpoenas, held in contempt of
 12 court, and ordered to pay moving party’s attorney’s fees and costs incurred in filing order to show
 13 cause regarding contempt) (citation omitted). In making its contempt determination, a district
 14 court considers the witness’ history of non-compliance and the extent to which the witness failed
 15 to comply during the pendency of the motion for contempt. *Id.* (citation omitted).

16 Remedies for civil contempt include: (1) “coercing compliance with a court order; and
 17 (2) compensating the prevailing party.” *Ahearn ex rel. N.L.R.B. v. Int’l Longshore & Warehouse*
 18 *Union, Locals 21 & 4*, 721 F.3d 1122, 1128 (9th Cir. 2013).

1 DATED: February 9, 2022

2 LANE POWELL PC

3
4 By: s/ Pilar C. French

5 Pilar C. French, WSBA No. 33300

6 Michael "Mac" Brown, WSBA No. 49722

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CERTIFICATE OF SERVICE

I, Pilar C. French, hereby certify under penalty of perjury of the laws of the State of Washington that on the 9th day of February 2022, I caused to be served a copy of the foregoing **DEFENDANTS' MEMORANDUM OF LEGAL AUTHORITY REGARDING CONTEMPT STANDARD** via U.S. Mail and electronic mail, on the following person(s) at the following address(es):

Mr. Brian Carl
5204 216th Street Southwest
Mountlake Terrace, WA 98044
E-Mail: brianCarl@outlook.com

DATED this 9th day of February 2022.

s/ Pilar C. French
Pilar C. French